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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,602

02/20/2004

Jerome P. Frankowiak

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GREGORY T. ZALECKI
12900 HALL ROAD
SUITE 400
STERLING HEIGHTS, MI 48313

EXAMINER

COHEN, AMY R

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 06/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/783,602

Applicant(s)

FRANKOWIAK, JEROME P.

Examiner

Amy R. Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/20/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Werts (U. S. Patent No. 978,525).

Werts teaches a folding framing square (Figs. 1-4) comprising: a body (15) having a tongue end (at 24), a body extension end (at 16), a straight bottom edge (Figs. 1 and 3), a tongue side edge (Figs. 1 and 3), a body extension side edge (Figs. 1 and 3), the tongue end side edge being perpendicular to the bottom edge (Figs. 1 and 3), and a channel (22); a tongue (23) having a straight outer edge (Fig. 3), said tongue being shaped to fit within the channel (Col 2, lines 85-91), said tongue being pivotally attached (at 24) proximal to the tongue end of the body such that the tongue can be pivoted into a closed position substantially recessed within the channel and can be pivoted into an open position such that the outer edge of the tongue and the tongue side edge are collinear (Figs. 1 and 3, Col 2, lines 85-91); and a body extension (the body extension is considered to be 10, wherein the front face 12 overlaps the body in the closed position) having a straight bottom edge (Figs. 1 and 3), the body extension being pivotally attached (at 16, 17) proximal to the body extension end of the body such that the body extension may be pivoted into an open position wherein the body extension bottom edge is collinear with the bottom edge of the body and the body extension may be pivoted into a closed position wherein the body

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extension substantially overlaps the body (Figs. 1 and 3), whereby the folding frame square can be folded into a closed configuration for carrying within a nail pouch and can be unfolded into an operative framing square (Figs. 1 and 2).

Werts teaches the folding framing square wherein the body has a recess (48) along its top edge for facilitating the grasping of the tongue when the tongue is within the channel of the body (Col 3, lines 35-37).

Werts teaches the folding framing square comprising distance calibrations imprinted thereon (Fig. 3).

Regarding the limitation “for carrying within a nail pouch,” it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werts in view of Persson (U. S. Patent No. 4,446,627).

Werts discloses the folding framing square as described above in paragraph 2.

Werts does not disclose a folding framing square comprising a spring loaded ball bearing positioned on the body extension end of the body; an open position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing; and a closed position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position.

Persson discloses a folding square comprising a spring loaded ball bearing (26) positioned on the body extension end of the body (Figs. 1 and 2); an open position body extension detent (27), shaped to receive the ball bearing (Fig. 2), positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68); and a closed position body extension detent (27), shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the pivot means of Werts with the spring loaded ball bearing pivot means, as taught by Persson, in order to ensure quick and precise positioning of the body extension in relation to the body thereby increasing the speed and accuracy of using the folding framing square.

5. Claims 9, 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Mouchel (U. S. Patent No. 1,015,877) in view of Yoo (U. S. Patent No. 4,770,559).

Du Mouchel discloses a folding frame square (Figs. 1 and 2) comprising: a body (1) having a tongue end, a body extension end, a straight bottom edge, a tongue side edge, a body extension side edge, the tongue end side edge being perpendicular to the bottom edge (Figs. 1 and 2), and a channel (Figs. 2, 3, 6, Col 2, lines 59-94), said body comprising a top face (1) having a pivot guide (at 10), a bottom face (1) having a pivot guide (at 10), a spacer (2, 3) having a channel opening (Figs. 7 and 8), and a pivot guide and receptacle (Figs. 7 and 8, not labeled, align with pivot guides at 10), said spacer being between the top face and the bottom face and said spacer being attached to the top face and the bottom face (Figs. 1-6), said pivot guides being in alignment with each other (Figs. 1 and 2); a tongue (8) having a straight outer edge, said tongue being shaped to fit within the channel (Figs. 2 and 3), said tongue being pivotally attached proximal to the tongue end of the body such that the tongue can be pivoted into a closed position substantially recessed within the channel and can also be pivoted into an open position such that the outer edge of the tongue and the tongue end side edge of the body are collinear (Figs. 1-3), said tongue having a cutout (Fig. 2, at 10) at its pivotally attached end for receiving a pivot; a body extension (9) having a straight bottom edge (Figs. 1 and 2), the body extension being pivotally attached proximal to the body extension end of the body such that the body extension may be pivoted into an open position wherein the body extension bottom edge is collinear with the bottom edge of the body and the body extension may be pivoted into a closed position (Figs. 1-3), whereby the folding framing square can be folded into a closed configuration and can be unfolded into an operative framing square (Figs. 1-3); a pivot (10) shaped to fit within the cutout of the tongue, positioned within the pivot guides (Figs. 1-5, 9); and comprising distance calibrations imprinted thereon (Figs. 1 and 2).

Du Mouchel does not disclose the folding frame square wherein the pivot guides and pivot comprise lock guides and a lock, and a spring positioned within the lock receptacle below the lock such that the spring will force the lock into the cutout of the tongue when the tongue and the body are perpendicular.

Yoo discloses a pivot assembly (6) wherein the pivot guides and pivot comprise lock guides (3', 3'', 8', 10, 10', 10'', 11, 11', 11'') and a lock (6'), and a spring (7, 14) positioned within the lock receptacle below the lock such that the spring will force the lock into the cutout of the tongue when the tongue and the body are in the open position (Figs. 2-5B).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the pivot assembly of Du Mouchel with the lock and spring assembly, as taught by Yoo, in order to create a secure, compact, and quick fitting for the pivot positions of the tongue and body, making the device more compact and aesthetically pleasing.

Regarding claim 9: Du Mouchel and Yoo disclose the folding frame square wherein the body extension may be pivoted into a closed position wherein the body extension substantially lies within the channel of the body. Changing the location of body extension from the location shown by Du Mouchel and Yoo to a location wherein the body extension substantially overlaps the body, absent any criticality, is only considered to be an obvious modification of the Du Mouchel and Yoo device that a person having ordinary skill in the art at the time the invention was made would be able to provide using routine experimentation since the courts have held that there is no invention in shifting the position if the operation of the device would not be thereby modified. *In re Japikse*, 86 USPQ 70 (CCPA 1950). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to shift the body extension to

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overlap the body when pivoted in a closed position since the body extension would still be within the outer limits of the shape of the body, and would therefore still create a compact folding frame square when folded.

Regarding the limitation “for carrying within a nail pouch,” it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

6. Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Mouchel and Yoo as applied to claims 9 and 11 above, and further in view of Werts.

Du Mouchel and Yoo disclose the folding frame square as described above in paragraph 5.

Du Mouchel and Yoo do not disclose the folding frame square wherein the body has a recess along its top edge for facilitating the grasping of the tongue when the tongue is within the channel of the body.

Werts discloses a folding frame square wherein the body has a recess (48) along its top edge for facilitating the grasping of the tongue when the tongue is within the channel of the body (Col 3, lines 35-37).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a recess within the body of Du Mouchel and Yoo, as taught by Werts, so that a user would easily be able to extend the tongue from the body, increasing the user's speed during work (Werts, Col 3, lines 35-37).

7. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Mouchel and Yoo as applied to claims 9 and 11 above, and further in view of Persson.

Du Mouchel and Yoo disclose the folding framing square as described above in paragraph 5.

Du Mouchel and Yoo do not disclose a folding framing square comprising a spring loaded ball bearing positioned on the body extension end of the body; an open position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing; and a closed position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position.

Persson discloses a folding square comprising a spring loaded ball bearing (26) positioned on the body extension end of the body (Figs. 1 and 2); an open position body extension detent (27), shaped to receive the ball bearing (Fig. 2), positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68); and a closed position body extension detent (27), shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the pivot means of Du Mouchel and Yoo with the spring loaded ball bearing pivot means, as taught by Persson, in order to ensure quick and precise positioning of the body

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extension in relation to the body thereby increasing the speed and accuracy of using the folding framing square.

8. Claims 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Du Mouchel and Yoo as applied to claims 9, 10, 12 above, and further in view of Persson.

Du Mouchel and Yoo disclose the folding framing square as described above in paragraph 6.

Du Mouchel and Yoo do not disclose a folding framing square comprising a spring loaded ball bearing positioned on the body extension end of the body; an open position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing; and a closed position body extension detent, shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position.

Persson discloses a folding square comprising a spring loaded ball bearing (26) positioned on the body extension end of the body (Figs. 1 and 2); an open position body extension detent (27), shaped to receive the ball bearing (Fig. 2), positioned on the body extension such that the body extension may be releasably locked into the open position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68); and a closed position body extension detent (27), shaped to receive the ball bearing, positioned on the body extension such that the body extension may be releasably locked into the closed position by the spring loaded ball bearing (Fig. 2, Col 2, lines 33-68).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the pivot means of Du Mouchel and Yoo with the spring loaded ball bearing pivot means, as taught by Persson, in order to ensure quick and precise positioning of the body extension in relation to the body thereby increasing the speed and accuracy of using the folding framing square.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents disclose framing squares Williams (USPN 6,829,837), Odachowski (USPN 6,807,743), Evans (USPN 6,662,460), Hurt (USPN 4,348,815), Hurt (USPN 4,327,501), Conn (USPN 4,317,289), Blackerby (USPN 3,019,973), Wise (USPN 2,741,030), Atherley (USPN 2,193,793), Dion (USPN 1,913,919), Putra (USPN 1,643,087), Schlattau (USPN 1,585,563), Englund (USPN 1,379,090), Taylor (USPN 1,242,740), Hamalainen (USPN 1,142,418), Larson (USPN 907,511), Hasson (USPN 787,172), and Lee (USPN 687,432).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARC
June 7, 2006



Diego Gutierrez
Supervisory Examiner
Tech Center 2800